is also by title paramount and not by succession as *ultimus haeres*. *In re Barnett's Trusts*, [1902] 1 Ch. 847; but see *Megit* v. *Johnson*, 2 Dougl. 542. But though technically not an heir, the state is a party interested in setting aside a will when the decedent leaves no heir nor kin. This interest should be sufficient in equity to support a contest, and thus defeat the fraud of one who has procured a will to be made in his favor, or prevent succession under an invalid testament. *Contra*, *Hopf* v. *State*, 72 Tex. 281; but *cf. In re Miner's Estate*, 143 Cal. 194; *Gombault* v. *Public Adm.*, 4 Bradf. Sur. (N. Y.) 226. And on this broad ground even the feudal lord could institute a contest. See *Davis* v. *Davis*, 2 Add. Eccl. 223.

# BOOKS AND PERIODICALS.

## I. LEADING LEGAL ARTICLES.

SERVICE OF PROCESS ON CORPORATIONS. — Due process of law, under the Fourteenth Amendment, requires that the court have jurisdiction[1] and that the defendant receive reasonable notice.[2] Personal jurisdiction must be founded on actual personal service within the state, on constructive service on residents, or on consent.[1] A corporation cannot literally be served in person, though service within the state on the officers of a domestic corporation may be considered actual service.[3] Otherwise corporations must be served constructively, as provided by the statutes of the various states.[4] In general, the validity of such service is said to be due to the allegiance of domestic corporations and to the consent of foreign corporations.[5] Assuming the correctness of the foregoing statements, Mr. W. A. Coutts devotes a recent article to several interesting related problems. *The Constitutionality of Statutes Authorizing Subservice of Process upon Corporations*, 66 Cent. L. J. 109 (February, 1908).

It has apparently never been held that service on any agent of a corporation, clearly permitted by statute, was invalid on account of the subordinate or unrepresentative character of the agent, and the consequent insufficiency of notice. The cases turn on the construction of statutes; their constitutionality is not questioned. However, the dicta of two important tribunals indicate that a statutory method of service may be unconstitutional on the ground of insufficiency of notice;[6] and in the case of a domestic corporation a statute providing for service through a state official in no way connected with the corporation has been held unreasonable and therefore unconstitutional.[7] Mr. Coutts, recognizing this authority, nevertheless suggests that a domestic corporation by incorporating, or a foreign corporation by entering the state and doing business therein, under a statute which provides for an unreasonable method of service, waives the unconstitutionality of the statute. For this doctrine he cites no cases. It is true that a domestic corporation which had accepted benefits under a franchise was not allowed to question the constitutionality of the grant;[8] but that is far from saying that incorporation works a waiver or an estoppel in regard to any law concerning corporations which happens at the time to be on the statute books. Domestic corporations, independently of any question of consent, are held as residents to be amenable to any reasonable

[1] See Pennoyer *v.* Neff, 95 U. S. 714.
[2] Roller *v.* Holly, 176 U. S. 398.
[3] *Cf.* Gaskell *v.* Chambers, 26 Beav. 252.
[4] See statutes collected in Beale, For. Corp., c. 7.
[5] *Ibid.*, § 261 *ff.*
[6] See Conn. Mut. Life Ins. Co. *v.* Spratley, 172 U. S. 602; Lake Shore, etc., R. Co. *v.* Hunt, 39 Mich. 469.
[7] Pinney *v.* Providence Loan, etc., Co., 106 Wis. 396.
[8] New York *v.* Manhattan R. Co., 143 N. Y. 1.

method of constructive service.[9] But, as already intimated, one case requires that the method be reasonable.[7]

A foreign corporation, not being a resident[10] or capable of actual personal service within the state,[11] can be served constructively only by consent. If this consent is express, though it is imposed as a condition precedent to the right to do business in the state, yet it is a true submission to the kind of service prescribed, however unreasonable, and doubtless the unreasonableness should not later be urged, though this point has never been decided.[12] The state cannot exclude a foreign corporation because it fails to comply with a condition repugnant to the Constitution,[13] or the principles of natural justice;[14] but the corporation having once complied and expressly consented to service, jurisdiction is perfected, and there remains no constitutional objection. This reasoning seems preferable to the author's theory of a waiver of constitutional rights, by which he reaches the same result. When, however, a foreign corporation fails to file express consent to the statute, but does business in the state, the courts take jurisdiction on the ground of implied consent;[15] that is, the corporation which has entered is not allowed to deny that it complied with the condition precedent to its right to enter.[16] The Supreme Court has lately held that this constructive consent, or estoppel to deny actual consent, does not arise when the condition is unreasonable with regard to the particular cause of action involved.[17] The same principle should apply if the statute was unreasonable on any other ground. Mr. Coutts does not observe this distinction between the cases of actual and implied consent. He maintains that service by publication on a foreign corporation ought to be as valid, if consented to, as any other mode of service. One case not cited in the article holds that such service is proper, if the consent is express.[18] Mr. Coutts fails to note that in the cases[19] which he cites as opposed to his opinion the only possible consent was constructive, and therefore the court might well decide that, the method of service being unreasonable, the consent would not be implied.

In considering in an analogous situation the liability of a foreign corporation which has ceased to do business in the state, Mr. Coutts argues that an agreement in advance to waive constitutional rights is void,[20] and hence the foreign corporation is not bound by its previous submission to an unconstitutional statute. He does not find this objection in the case where the corporation continues to do business; for there the act of consent, namely, the doing of business, continues to the time of service and concurs with the service. But a simpler view would be to regard the continuing or cessation of business as a circumstance to be considered in construing an express consent as revocable or not,[21] irrespective of the reasonableness of the statute, or in raising a constructive consent when the statute is reasonable.

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[9] Hinckley *v.* Kettle River R. Co., 70 Minn. 105.

[10] Beale, For. Corp., § 73.

[11] *Ibid.*, § 74. In some jurisdictions a foreign corporation doing business is considered "found" for purposes of service of process, without the aid of any principle of consent. Haggin *v.* Comptoir d'Escompte, 23 Q. B. D. 519. See 6 Thompson, Corp., § 7989.

[12] In general an agreement to waive service is a valid basis of jurisdiction. Kingman *v.* Paulson, 126 Ind. 507.

[13] Blake *v.* McClung, 172 U. S. 239.

[14] See La Fayette Ins. Co. *v.* French, 18 How. (U. S.) 404.

[15] Funk *v.* Anglo-Am. Ins. Co., 27 Fed. 336.

[16] This reasoning is criticized in Beale, For. Corp., § 267; but, whether the statute provides for service on an agent of the corporation or on a state official, it seems difficult to distinguish implied consent from a principle in the nature of estoppel.

[17] Old Wayne Mut. Life Ass'n *v.* McDonough, 204 U. S. 8; 20 HARV. L. REV. 572.

[18] Mohr & Mohr Distilling Co. *v.* Firemen's Ins. Co., 10 Wkly. L. Bul. (Oh.) 82.

[19] Tillinghast *v.* Boston, etc., Co., 39 S. C. 484; Toms *v.* Richmond, etc, Co., 40 S. C. 520

[20] Citing Home Ins. Co. *v.* Morse, 87 U. S. 445.

[21] See Beale, For. Corp., § 281; 19 HARV. L. REV. 52.